CONSTITUTIONAL LAW — POWERS OF CONGRESS: NATURALIZATION OF ALIENS — CONFLICT OF FEDERAL AND STATE STATUTES. — A federal act provided that certain state courts might take jurisdiction of the subject of naturalization of aliens, and that the clerks of the courts might keep one half of the fees collected, after paying the other half over to the federal government. On the other hand, a Massachusetts statute provided that all of the fees so collected should be paid over to the state. *Held*, that the clerk may keep his share of the fees. *Inhabitants of Hampden County* v. *Morris*, 93 N. E. 579 (Mass.).

As, under the Constitution, Congress is given exclusive jurisdiction over the subject of naturalization, the state courts when acting under its authority can do so only as its agents, and thus all fees collected under such a power must belong to the giver of the power. But these same courts are in fact created by and wholly dependent upon the authority of the state, which may regulate their every activity. *Scott* v. *Strobach*, 49 Ala. 477. So the state may prohibit them entirely from exercising this jurisdiction. *Gilroy, Petitioner*, 88 Me. 199. Again, it can give them any fixed or contingent salary that it deems expedient. So also it would seem that it could even demand compensation for making them the *personae designatae* of the federal act. But it cannot go further and demand money, either in whole or in part, that in right belongs to the federal government. And so as the clause of the Massachusetts statute under consideration fails in part, it fails altogether, and leaves the clerk of the court free to retain the fees in question. *Eldredge* v. *Salt Lake County*, 106 Pac. 939 (Utah).

CONSTITUTIONAL LAW — PRIVILEGES AND IMMUNITIES: CLASS LEGISLATION — DISCRIMINATION FAVORING THOSE TREATING BY PRAYER. — The plaintiff was imprisoned for violating a statute requiring practitioners of medicine to have licenses, with a proviso that "nothing herein shall be held to apply or to regulate any kind of treatment by prayer." The plaintiff petitioned for a writ of *habeas corpus* on the ground that the statute was unconstitutional. *Held*, that the writ should be denied. *Ex parte Bohannon*, 111 Pac. 1039 (Cal., Ct. App.).

The ground on which the court bases its decision is that there is no violation of the Fourteenth Amendment because all are equally enabled to engage in such treatment. Such an explanation seems inadequate, for wherever there is class discrimination all may be at liberty to engage in the favored occupation. But police regulations favoring certain classes are not in violation of the Fourteenth Amendment if the discriminations are based on reasonable differences between the classes. *State ex rel. Kellogg* v. *Currens*, 111 Wis. 431. See 15 HARV. L. REV. 491. In the principal case the difference in the mode of treatment, amount of education required, etc., would seem to make the discrimination justifiable.

CONSTITUTIONAL LAW — SEPARATION OF POWERS. — JUDICIAL APPOINTMENT OF EXPERT WITNESSES. — A Michigan statute provided that in homicide cases where the issues involved expert knowledge, the court should appoint one or more suitable disinterested persons to investigate such issues and testify at the trial. The fact that such witnesses had been so appointed was to be made known to the jury. Either side could introduce other witnesses. Experts so appointed testified on the issue of insanity at the trial of the defendant for murder. *Held*, that the statute is unconstitutional. *People* v. *Dickerson*, 129 N. W. 198 (Mich.). See NOTES, p. 483.

EMINENT DOMAIN — WHAT PROPERTY MAY BE TAKEN — PROPERTY DEDICATED TO PARTICULAR USE. — The State of Illinois held in trust land dedicated by the United States for use as a park; and the defendant was an abutting

property owner to whom a statute gave the right to enforce the condition that the park should remain open and vacant. The plaintiffs, under a statute authorizing them to condemn private rights in connection with the building of a museum in the park, petitioned for the condemnation of the defendant's right of easement. *Held*, that the petition be dismissed. *South Park Commissioners* v. *Montgomery Ward & Co.* (Ill., Sup. Ct.), 93 N. E. 910.

It is well settled that the state as grantee of land dedicated to a particular use cannot divert it to a different use. *City of Jacksonville* v. *Jacksonville Ry. Co.*, 67 Ill. 540. But the court in the principal case held further that the state could not by eminent domain condemn the defendant's private right to have the land kept open. If this follows from the acceptance of the land so dedicated, the state has suffered a serious limitation to its powers. But by assuming duties as trustee of land dedicated to a particular use, it does not surrender its sovereign rights. See *New Orleans* v. *United States*, 10 Pet. (U. S.) 662, 723. The right of eminent domain is an attribute of sovereignty which cannot be contracted away or extinguished. *Village of Hyde Park* v. *Oakwoods Cemetery Ass'n*, 119 Ill. 141. Whether or not it is expedient to use the right in a given case is a political rather than a judicial question. *O'Hare* v. *Chicago, etc. R. Co.*, 139 Ill. 151. The principal case, which, it is submitted, is not to be supported, fails to recognize the difference between the powers of the state as trustee and its powers as sovereign. See *United States* v. *Illinois Central Ry. Co.*, 2 Biss. (U. S.) 174.

EQUITY — PRIORITY OF EQUITIES — PURCHASER FOR VALUE AND WITHOUT NOTICE OF AN EQUITABLE INTEREST FRAUDULENTLY APPOINTED. — A husband and wife, having under a marriage settlement a power to appoint an equitable interest in personal property among children, appointed to a son who, in accordance with a previous bargain with the appointors, sold his interest to the defendants and paid over to the appointors the money received. The defendants were ignorant of this fraud on the power. Those who were entitled in default of appointment sought to have the appointment set aside. *Held*, that they can do so. *Cloute* v. *Storey*, [1911] 1 Ch. 18. See NOTES, p. 490.

ESTOPPEL — ESTOPPEL IN PAIS–ESTOPPEL PREDICATED UPON AN INNOCENT MISREPRESENTATION. — Land of the plaintiff's deceased wife was sold by the children to the defendant, who apparently was ignorant of the fact that the plaintiff was entitled to an estate by the curtesy. The plaintiff, an infirm and illiterate old man, later discovered his right and brought ejectment. *Held*, that the plaintiff is not estopped to assert his title. *Dotson* v. *Merritt*, 132 S. W. 181 (Ky.). See NOTES, p. 494.

EVIDENCE — DYING DECLARATIONS — IMPEACHMENT. — In a prosecution for homicide the judge refused to charge the jury that the decedent's lack of belief in a future state of rewards and punishments might be considered as affecting the credibility of his dying declarations. *Held*, that the instruction was properly refused. *State* v. *Yee Gueng*, 112 Pac. 424 (Ore.). See NOTES, p. 484.

HUSBAND AND WIFE — PRIVILEGES AND DISABILITIES OF COVERTURE — STRICT CONSTRUCTION OF STATUTE GIVING SEPARATE RIGHTS. — A married woman made a contract with her husband. The plaintiff as her assignee sued the husband under a statute allowing the wife to prosecute or defend suits at law or in equity, either of tort or contract, as if unmarried. Another Maine statute gives a married woman power to contract with her husband. *Held*, that the plaintiff cannot recover. *Perkins* v. *Blethen*, 78 Atl. 574 (Me.).

For a discussion of the principles involved, see 24 HARV. L. REV. 403.